

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DEWAYNE WASHINGTON,

Plaintiff,

vs.

J. TURNER, *ET AL.*,

Defendants.

No. 2:01-cv-01677-JKS

ORDER

[Re: Service of Subpoenas]

At Docket No. 148 Plaintiff DeWayne Washington filed a witness list that this Court has construed as a request for the issuance of subpoenas under FED. R. CIV. P. 45. At Docket No. 165 the Court directed the Clerk of the Court to issue 14 subpoenas to Plaintiff. That Order did not address the subject of service of the subpoenas on the witnesses.

At Docket No. 2 Plaintiff was authorized by the Court to proceed *in forma pauperis* under 28 U.S.C. § 1915(a). Consequently, issuance and service of the subpoenas in this case is governed by 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process, and perform all duties in such cases.”). However, FED. R. CIV. P. 45(b)(1) requires that service of a subpoena commanding appearance be accompanied by tendering to the witness the fees for one day’s attendance and the mileage allowed by law. This Court has no authority to either pay or waive the witness fees required by Rule 45(b)(1). *Dixon v. Ylst*, 990 F.2d 478, 480 (9th Cir.1993); *Tedder v. Odel*, 890 F.2d 210, 211–12 (9th Cir.1989).

Accordingly,

IT IS ORDERED THAT:

1. Plaintiff must properly and completely complete the subpoenas and return them to the Clerk of the Court accompanied by the required witness fee and mileage or by evidence that the witness has waived the fee and mileage.

2. The Clerk of the Court is directed to forward to the United States Marshal's Service any subpoena returned properly completed and accompanied by the required witness fee and mileage or waiver of such fee and mileage.

3. The United States Marshal's Service is directed to serve all such subpoenas as provided in FED. R. CIV. P. 45(b) and file thereafter a proof of service.

IT IS FURTHER ORDERED THAT Plaintiff must reimburse the United States Marshal's Service fee for service of the subpoenas as otherwise provided by law.

DATED: April 12, 2007.

s/ James K. Singleton, Jr.

---

JAMES K. SINGLETON, JR.

United States District Court Judge